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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,520	02/14/2001	Geraldine Lerebour	BJS-2365-28	7537

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EXAMINER	
KIM, JENNIFER M	
ART UNIT	PAPER NUMBER
1617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/782,520	LEREBOUR ET AL.	
	Examiner	Art Unit	
	Jennifer Kim	1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-36* is/are pending in the application.

4a) Of the above claim(s) *16 and 28-36* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-15 and 17-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 18, 2006 has been entered.

Response to Arguments

Applicants' arguments with respect to the rejection(s) of claim(s) amended claims 13-15 and 17-27 under 35 U.S.C. 103(a) as being unpatentable over Wright (U.S.Patent No. 5,547,677) of record have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Carson et al. (U.S.Patent No. 5,416,075) in view of Garofano (U.S.Patent No. 6,495,153 B2).

It is noted that claims 13-15 and 17-27 are examined to the extent of Applicant's elected specie, **olive oil**, as a fatty substance free of carbohydrate units. Claims 16 and 28-36 are withdrawn from consideration because they are non-elected invention.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 13-15 and 17-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carson et al. (U.S.Patent No. 5,416,075) in view of Garofano (U.S.Patent No. 6,495,153 B2).

Carson et al. teach Oil-in-water emulsions comprising surfactants with biospecific headgroups. Carson et al. teach that the emulsion droplets **adhere** to surfaces of microorganisms or to various biological surface bearing appropriate adhesions, thus delivering surfactants materials directly to various surfaces. Carson et al. teach that emulsion contain oil droplets which serve as a substrate for an amphipatic compound including **olive oil.** (abstract, column 7, line 50 - column 8, line 1). Carson et al. teach that when the desired target surface is mammalian skin hair, or nails, suitable lipophilic materials include skin anti-ageing compound, skin conditioning compound, vitamins, perfumes, UV-absorbing materials, anti-acne agents, anticellulite compounds and mixtures thereof. Carson et al. teach the oil phase constitutes from 1% to 70%, preferably from 5% to 50%, most preferably from 10% to 30% by weight of the emulsion. (column 9, lines 59-62). These amounts are within Applicants' amount set forth in claim 18 and encompass the amount set forth in claim 19. Carson et al. teach that the composition can be formulated in the form of toothpaste, cream, or gels or mouthwashes. Column 10, lines 2-5). Carson et al. teach that the oil droplet in the emulsion provides polyvalent binding site for a microorganism or another cell on a biological surface, since numerous adhesin/receptor pairs are available to achieve adherence between a microorganisms or a biological surface and a biospecific amphipatic compound. (column 3, lines 55-61). Carson et al. teach that the emulsions may be incorporated into oral hygiene non-food compositions for compositions for topical application to skin, hair or nails. Carson et al. teaches that indigenous bacteria and other microorganisms (e.g. yeasts) present in an oral cavity or on other biological

surfaces adhere to various substrates (e.g. microorganisms of the same or different genus, teeth surface, epithelial surface) via receptor-modulated recognition mechanisms and that microorganism in general express structure, generally termed "adhesions" which recognize and bind selectively to specific moieties called "receptors' found on microorganisms' surface or biological surfaces (e.g., teeth, oral cavity, skin, hair, or nails). Carson et al. teach that the adhesin/receptor modulated recognition mechanisms allow microorganisms to adhere with a high degree of selectivity and specificity to other microorganism (of same or different genus and/or species) and/or to a biological surface. Carson et al. teach that numerous skin microorganisms interact with epithelial substrates through receptor-modulated recognition between cells' surfaces and that various skin microorganisms adhere preferentially to specific sites on various body surfaces. (abstract, column 15-40, lines 50-55). Carson et al. teach that coaggregation reactions between complementary pairs of microorganisms or between microorganisms and biological surfaces can be inhibited by the presence in solution of the various moieties which are recognized by lectins and that competition for binding sites prevents or minimizes coaggregation to adherence. (column 2, lines 40-50).

Carson et al. do not expressly illustrate an example of the oil droplet emulsion employing olive oil and the mechanism of disrupting the ecological balance and the chemical characteristic of olive oil having a melting point of less than 35C and having an interfacial tension of between 6 and 27 mN/m.

Garofano teaches the skin treating component comprising olive oil absorbs moisture on the skin to make an undesirable environment for the fungus and creates an unpleasant, oily environment for the fungus. (abstract).

It would have been obvious to one of ordinary skill in the art to modify the teaching of Carson et al. by employing olive oil as a oil droplet component in the Carlson et al's emulsion because Carson et al. teach that olive oil can be employed in the emulsion to achieve adherence between a microorganism or a biological surface and because Garofano teaches olive oil in a skin treating component absorbs moisture on the skin to make an undesirable environment of the fungus and creates an unpleasant, oil environment is old and well known. One would have been motivated to make such modification in order to achieve an expected benefit of achieving clean skin by employment of an olive oil component in the oil droplet emulsion creating an unpleasant, oily environment for microorganisms on the skin and to prevent the microorganism from adhering to skin by oily coating the surface of microorganism. There is an expectation of successfully reducing adherence of microorganism and disruption of ecological balance of the resident flora because olive oil is well known to be oily, and therefore creates unpleasant environment for the microorganisms like fungus as taught by Garofano and that olive oil composition reduces the adhesion of microorganisms to the surface of the skin by adhering to the microorganisms taught by Carson et al. Further, the chemical/physical characteristics of olive oil having an melting point of less than 35 C and having the specified interfacial tension can be found with the same olive oil compound and within the same amounts taught by the cited

references because the physical/chemical characteristic of a compound is inseparable. Moreover, the intentions such as to reduce body odors, to use for body hygiene health care or combat comedones and/or dandruff are all obvious because that indigenous bacteria and other microorganisms (e.g. yeasts (fungus)) that causes body odors, dandruff and mycosis would obviously be removed by Carson et al. as modified by Garofano.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carson et al. (U.S.Patent No. 5,416,075) in view of Garofano (U.S.Patent No. 6,495,153 B2) as applied to claims 13-15 and 17-24 above and further in view of Cullinan (U.S.Patent No. 5,439,923).

Teachings of Carson et al. and Garofano as applied as before.

Carson et al. and Garofano do not teach the resident flora of *Propionibacterium acnes* set forth in claim 25.

Cullinan teaches that common, indigenous skin principal bacteria is *propionibacterum Acnes*. (column 1, lines 35-37).

It would have been obvious to one of ordinary skill in the art at the time the invention was made that oil droplet emulsion taught by Carson et al. as modified by Garofano would disrupt the ecological balance of any indigenous skin bacteria particularly *Propionibacterium acnes* because Carson et al. teaches that the emulsion adheres to indigenous bacteria and other microorganism of the skin and because Cullinan teaches that common indigenous bacteria of skin is *propionibacterum Acnes*.

One would have been motivated to employ the emulsion composition taught by Carson et al. as modified by Garofano in order to disrupt and reduce adherence of most common skin indigenous bacteria of skin, *propionibacterum acnes*, in order to successfully achieve clean bacteria free skin in order to prevent the infection.

For these reasons the claimed subject matter is deemed to fail to patentably distinguish over the state of the art as represented by the cited references. The claims are therefore properly rejected under 35 U.S.C. 103.

None of the claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kim whose telephone number is 571-272-0628. The examiner can normally be reached on Monday through Friday 6:30 am to 3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jennifer Kim
Patent Examiner
Art Unit 1617

Jmk
January 31, 2007